

on rounds per day. Rather, we will continue to exercise discretion with regard to the number of rounds per day under the particular circumstances of the auction.

2. Reserve Price and Minimum Opening Bids

192. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.²⁴² Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.²⁴³ Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.²⁴⁴ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.²⁴⁵

a. Reserve Price

193. In the *700 MHz Second Report and Order*, the Commission concluded that establishing separate aggregate reserve prices for all the licenses in each block of the 700 MHz Band spectrum to be offered in Auction 73 will serve the public interest.²⁴⁶ More specifically, the Commission directed the Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and the regular pre-auction process and consistent with the Commission's conclusions in the *700 MHz Second Report and Order*.²⁴⁷ In the *700 MHz Auction Public Notice*, the Bureau proposed that the sum of the provisionally winning gross bids for all licenses in each block must equal or exceed the disclosed aggregate reserve price for the block before the Commission will assign licenses in that block.²⁴⁸ More specifically, the Bureau proposed the following block-specific aggregate reserve prices to be used under this proposal: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion.²⁴⁹ As discussed below, we adopt this proposal.

194. *Background.* In the *700 MHz Second Report and Order*, the Commission concluded that the block-specific aggregate prices should reflect current assessments of the potential market value of

²⁴² 47 U.S.C. § 309(j)(4)(F).

²⁴³ Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 375, 455-456 ¶ 141 (1997) ("*Part 1 Third Report and Order*").

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *700 MHz Second Report and Order* at ¶ 301-04.

²⁴⁷ *Id.*

²⁴⁸ *700 MHz Auction Public Notice* at ¶ 47. If the auction results satisfy a block-specific aggregate reserve, licenses in that block will be assigned based on the auction results, subject to completion of the licensing process, including review of applicants' qualifications. If not, the Commission has provided for a prompt auction of alternative, less restrictive licenses for the A, B, C, and E Blocks, and the possibility of a prompt re-auction of the license for the D Block, subject to the same applicable block-specific reserves. The procedures for Auction 76 are set forth in Section V, below.

²⁴⁹ *700 MHz Auction Public Notice* at ¶¶ 47, 53.

licenses for the 700 MHz Band. The Commission directed that this assessment be based on various factors including, but not limited to, the characteristics of this band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services. The Commission reasoned that using AWS-1 auction results might be an appropriate guide for setting block-specific reserve prices reflecting a conservative estimate of final market value. Spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS-1 spectrum. In addition, as of February 18, 2009, the 700 MHz Band spectrum will be unencumbered, while full access to AWS-1 spectrum requires the relocation of both Government and commercial incumbent users. Thus, other factors aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value than AWS-1 licenses.²⁵⁰

195. The Commission expressly noted that the detailed rules regarding the D Block license, the D Block licensee's required construction of a network to be shared by public safety service users, and the resulting limitations on the flexibility of the D Block licensee, should be given weight in assessing the D Block's potential market value. Based solely on geographic area and spectrum block size, AWS-1 auction results might suggest a D Block reserve price of \$1.7 billion. However, in light of the D Block license conditions essential to the public safety purpose of the public/private partnership, it might be appropriate to expect bidders to bid only about 75 percent to 80 percent of such an amount, or about \$1.33 billion. In addition, when determining relative valuation of other blocks, the Bureau should consider the relative valuation of differing blocks in the recent auction of AWS-1 licenses.²⁵¹

196. The Commission further noted that in setting block-specific reserve prices, the Bureau should also give consideration to Congress's view as to the value of the spectrum, as reflected in Congressional mandates regarding the uses for revenues from this auction.²⁵²

197. *Comments.* Frontline contends that the proposed reserve prices are excessive and proposes an alternative set of reserve prices roughly equal to one-fifth the reserve prices proposed by the Bureau.²⁵³ Frontline asserts that the Bureau's proposed reserve price represent an estimate of final license values and that establishing such a reserve, particularly in light of the potential subsequent auction of alternative licenses, is misguided.²⁵⁴ Frontline further argues that the Bureau's reliance on bidding for AWS licenses is misplaced in that it does not take into account subsequent changes in the credit markets or significant differences between AWS licenses and 700 MHz licenses, which Frontline contends should reduce the relative value of the 700 MHz licenses.²⁵⁵

198. In reply, and in opposition to Frontline's comments, both Verizon Wireless and MetroPCS echo the Commission's observation that that the value of the 700 MHz licenses in fact should be greater than the AWS licenses and contend that the Bureau's proposed reserve prices reflect a conservative estimate of the likely value of the 700 MHz licenses.²⁵⁶ As MetroPCS notes, attempts to take into account the fluctuating state of the credit market are not appropriate, given the degree of uncertainty inherent in such attempts.²⁵⁷ Verizon Wireless notes that, contrary to Frontline, the Bureau's

²⁵⁰ 700 MHz Second Report and Order at ¶¶ 301-05.

²⁵¹ *Id.*

²⁵² These mandates total \$10.1825 billion. See DTV Act, §§ 3005-3012; 47 U.S.C. § 309(j)(8)(E)(iii).

²⁵³ Frontline Comments at i, Attachment A at 17.

²⁵⁴ Frontline Comments at 3.

²⁵⁵ *Id.* at 4-6.

²⁵⁶ MetroPCS Reply Comments at 9; Verizon Wireless Reply Comments at 9-10.

²⁵⁷ MetroPCS Reply Comments at 10, n.40.

proposal takes into account conditions placed on the various blocks of 700 MHz spectrum.²⁵⁸ Finally, Verizon Wireless also notes that the proposed reserves are consistent with Congressional expectations.²⁵⁹

199. *Discussion.* We do not find Frontline's arguments for reducing the proposed reserve prices persuasive. Frontline errs in asserting that the Bureau's proposed reserves seek to estimate the final value of the licenses. The Bureau has not attempted to determine the value of the licenses but will rely on the auction process to do so. Rather, pursuant to statutory mandate and Commission direction, the Bureau proposed reserve prices intended to represent a likely low end of the licenses' potential value, in order to assure that the public recovers a portion of the value of the public spectrum resource. Consistent with the guidance of the Commission, we adopt the proposal and will use the following block-specific aggregate reserve prices for Auction 73: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. Together, these block-specific aggregate reserves sum to \$10.053350 billion.²⁶⁰

200. As the Commission has already noted, the D Block reserve price of \$1.33 billion is discounted from an amount based more closely on AWS-1 bids because of the unique service rules and related obligations imposed upon the D Block licensee. For the A, B, C, and E Blocks, we base the reserve prices on the respective market value reflected in AWS-1 bids, adding one percent, and rounding to the nearest thousand dollars. Because of the value-enhancing propagation characteristics and relatively unencumbered nature of the 700 MHz Band spectrum, we believe these are conservative estimates, at the low end of the spectrum's potential value.²⁶¹ Given this approach, there is no need to further reduce the

²⁵⁸ Verizon Wireless Reply Comments at 10.

²⁵⁹ *Id.* at 11.

²⁶⁰ The Commission's suggested \$10.4 billion conservative aggregate market value estimate for the 700 MHz licenses was derived as the sum of block-specific estimates of the market value of 700 MHz licenses, based on AWS-1 winning bids. Each block-specific estimate was based on bid amounts for comparable AWS-1 spectrum blocks, taking geographic area type and bandwidth into account, and further adjusting for the specific bandwidth in the 700 MHz blocks. *See 700 MHz Second Report and Order*, at n.700. The block-specific reserves we propose here accept the amounts suggested by the Commission in the *700 MHz Second Report and Order* as a base, with the \$10.4 billion conservative aggregate market value estimate adjusted for the specific amount of \$1.33 billion for the D Block.

²⁶¹ The estimated market values based on Auction 66 (AWS-1) bids and the calculation of the reserve prices we propose are described in the tables below.

Estimated 700 MHz Band Market Value Based on AWS-1 Bids

700 MHz Block	700 MHz Bandwidth (MHz)	Geographic Area Type	Comparable AWS-1 Block	AWS-1 Bandwidth (MHz)	Bandwidth Ratio 700/AWS-1	AWS-1 Bids	Estimated Market Value Based on AWS-1 Bids
A	12	EA	C	10	1.2	\$1,491,238,000	\$1,789,485,600
B	12	CMA	A	20	0.6	\$2,268,029,200	\$1,360,817,520
E	6	EA	C	10	0.6	\$1,491,238,000	\$894,742,800
C	22	REAG	F	20	1.1	\$4,174,486,000	\$4,591,934,600
D	10	Nationwide*	D and E	10	1.0	\$1,749,031,000	\$1,749,031,000
Total	62						\$10,386,011,520

* Since AWS-1 did not have any nationwide licenses, "Estimated Market Value Based on AWS-1 Bids" is based on Auction 66 bids for 10 MHz REAG licenses.

The "Estimated Market Value Based on AWS-1 Bids" is calculated as the "Bandwidth Ratio 700/AWS-1" multiplied by "AWS-1 Bids."

(continued....)

proposed reserves based on the specific rules applicable to licenses for the A, B, C, and E Blocks, as suggested by Frontline.

201. As proposed in the *700 MHz Auction Public Notice*, we will use gross bid amounts rather than net bid amounts in determining whether the block-specific reserve prices have been met.²⁶² No commenter suggested any alternative to this aspect of our reserve price procedures. Anonymous bidding procedures that will be used in Auction 73 preclude disclosing the identity of bidders and the net amounts of bids made until after the close of bidding. Consequently, if net bids determined whether or not reserves had been met, publicly disclosing whether reserves had been met might inadvertently disclose whether applicants eligible for bidding credits held certain provisionally winning bids, potentially disclosing the identity of the bidders. For example, presuming net bids determined whether or not the reserve is met, for the reserve not to be met when the provisionally winning bid on the D Block license is for \$1.5 billion dollars, the party making the bid must be an applicant eligible for a bidding credit. Depending on the number of parties eligible for a bidding credit competing for the D Block license, this information might disclose the identity of the provisionally winning bidder, thwarting the Commission's anonymous bidding procedures. Moreover, net bid amounts, unlike gross bid amounts, may decline even as the gross bids increase. For example, a party not eligible for a bidding credit might hold a provisionally winning bid of \$1.4 billion on the D Block license, in which case the reserve would be met. However, in the next round, a party eligible for a bidding credit might place a provisionally winning bid of \$1.5 billion, increasing the value bid for the license. However, because the party eligible for a bidding credit might have a net bid less than the reserve, now the reserve would not be met. We believe that it serves the public interest for bidders to know when the reserve is met and to know that once a reserve is met that fact will not change. This certainty will give bidders greater confidence in the significance of their bids and therefore may enhance competition. For these reasons, we will use gross bid amounts rather than net bid amounts in determining whether block-specific reserve prices have been met.

202. We also will count the gross amount of any withdrawn bids for licenses toward meeting the reserve prices for several reasons.²⁶³ First, withdrawn bids presumably reflect sincere valuations of the license, notwithstanding the withdrawal and the reserve is intended to measure that valuation. Second, counting withdrawn bids assures that once a reserve is met that fact will not change. Third, if we

(Continued from previous page)

700 MHz Band Reserve Prices

700 MHz Block	Estimated Market Value Based on AWS-1 Bids	Commission Guidance on D Block Reserve Price	700 MHz Band Reserve Prices
A	\$1,789,485,600		\$1,807,380,000
B	\$1,360,817,520		\$1,374,426,000
E	\$894,742,800		\$903,690,000
C	\$4,591,934,600		\$4,637,854,000
D	\$1,749,031,000	\$1,330,000,000	\$1,330,000,000
Total	\$10,386,011,520		\$10,053,350,000

The "Estimated Market Value Based on AWS-1 Bids" entries were calculated in the previous table.

"Commission Guidance on D Block Reserve Price" reflects explicit Commission advice on the D Block reserve price.

Auction 66 results are available at <http://wireless.fcc.gov/auctions/66/>.

²⁶² 700 MHz Auction Public Notice at ¶ 55.

²⁶³ US Cellular and Frontline filed comments or reply comments advocating counting the gross amount of any withdrawn bids toward meeting the reserve price. US Cellular Comments at 4; US Cellular Reply Comments at 9; Frontline Reply Comments at 1-2; see Verizon Wireless Comments at 6-7 (raising issue).

did not count withdrawn bids, bidders could attempt to use bid withdrawals as a strategic mechanism to prevent auction results from satisfying a reserve in order to force an auction of alternative licenses.

203. First, as discussed below, the Commission's rules and the procedures for Auction 73 allow each bidder one round in which the bidder may withdraw provisionally winning bids for licenses not subject to package bidding. Allowing bidders to withdraw provisionally winning bids enables bidders to respond to price discovery as the auction develops by adopting alternative plans, thereby encouraging bidders to compete at early stages in the auction. Accordingly, we presume that bids placed and withdrawn reflect bidders' sincere valuations of the relevant licenses. Consistent with this presumption, the Commission's rules require bidders to cover any shortfall if a subsequent winning bid for a license is less than a withdrawn provisionally winning bid.²⁶⁴

204. Second, counting withdrawn bids is essential to assuring that once a reserve price is met, that fact does not change. As discussed below in connection with bid withdrawals, when a bid is withdrawn, there is no provisionally winning bid on that license until a new high bid is placed on it in a subsequent round. Accordingly, if we do not count withdrawn bids, then the amount counted for a particular license toward meeting the reserve price could drop from whatever the withdrawn bid is to zero. For example, if a provisionally winning bid on the D Block license of \$2.66 billion is withdrawn and only a provisionally winning high bid is counted toward the reserve, the reserve will not be met, notwithstanding the fact that a round before there was a provisionally winning bid in an amount equal to twice the reserve.

205. Third, if we did not count a withdrawn bid toward meeting the reserve, we would allow a bidder's decision to withdraw a bid to affect whether or not the reserve price has been met. As the foregoing example indicates, a bidder could outbid rivals for a license in amounts far in excess of the reserve and then, at the last minute, withdraw its bid in an attempt to prevent the auction results from meeting the applicable reserve price. If the withdrawing bidder's competitors had moved to other blocks due to the withdrawn bid, they may no longer have an interest or the budget to return and bid again on the license subject to the withdrawal. In that event, the withdrawal might succeed at preventing the reserve from being met and at forcing an auction of alternative licenses.

206. In summary, we will count the gross amount of either the provisionally winning bid on a license, or on a package that includes the license, or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether a reserve price has been met. We will not count more than one bid per license, be it a provisionally winning or withdrawn bid, towards meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, we will count the highest of the gross bid amounts toward the reserve price. Other than the gross amounts of withdrawn bids as described above, licenses without provisionally winning bids will not count towards meeting a reserve price.²⁶⁵

207. Finally, we will issue an announcement in the FCC Auction System stating that a reserve has been met immediately following the first round in which that occurs. Both the registered bidders and the general public will be able to view such announcements through the Commission's website. The current total of relevant provisionally winning bids may not determine whether or not the reserve has been met, given that we also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, we will free auction observers and participants therefore from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

²⁶⁴ 47 C.F.R. § 1.2104(g)(1).

²⁶⁵ For example, for a license without a provisionally winning bid, we will not count the minimum opening bid amount towards meeting the reserve price for the block.

b. Minimum Opening Bids

208. In addition to proposing aggregate reserve prices, the Bureau proposed in the *700 MHz Auction Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids.²⁶⁶ Specifically, for Auction 73, the Bureau proposed to calculate minimum opening bid amounts as follows:²⁶⁷

- For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of \$0.03/MHz-pop
- For licenses covering geographic areas for which a corresponding Auction 66 license was unsold, \$0.01/MHz-pop
- For licenses covering the Gulf of Mexico, \$1,000 per MHz
- For all remaining licenses, \$0.01/MHz-pop

For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using our standard rounding procedure.²⁶⁸ The Bureau proposed to calculate the minimum opening bid for any package as the sum of the minimum opening bids for the licenses in the package. The Bureau sought comment on this proposal and, in the alternative, whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.²⁶⁹

209. The Bureau received a range of comments concerning the proposed minimum opening bids. Wrege/Hoffman support the Bureau's proposed method for establishing minimum opening bid amounts.²⁷⁰ However, the 4G Coalition advocates calculating minimum opening bids on the same basis that was used for Auction 66, rather than on one that uses the winning bids from that auction.²⁷¹ The Blooston Rural Carriers oppose using minimum opening bids based on Auction 66 results, arguing that the 700 MHz Band spectrum is not readily comparable to that offered in Auction 66. They maintain that some prices in that auction resulted from one-time bidding wars, so that RSA minimum opening bids based on these prices would be overly high and harm small and rural carriers.²⁷² MetroPCS also contends that the proposed minimum opening bids would discourage these carriers from participating. It proposes that the minimum opening bids from Auction 66 should generally be used.²⁷³ In addition, MetroPCS claims that reducing the minimum opening bids would prevent the auction from proceeding at too rapid a pace.²⁷⁴ RTG agrees that the proposed minimum opening bids for some RSAs are too high, and proposes

²⁶⁶ *700 MHz Auction Public Notice* at ¶¶ 56-59.

²⁶⁷ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, news releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

²⁶⁸ Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁶⁹ *700 MHz Auction Public Notice* at ¶¶ 56-59.

²⁷⁰ Wrege/Hoffman Comments at 8.

²⁷¹ 4G Coalition Comment at 13.

²⁷² Blooston Rural Carriers Comments at 5-6.

²⁷³ MetroPCS Comments at 13-16.

²⁷⁴ *Id.* at 15.

that these be reduced to either the same level as the upfront payments or capped at 25 percent of the median net high bid for all RSAs sold in Auction 66.²⁷⁵ Verizon Wireless generally criticizes as arbitrary the proposals to lower the minimum opening bids to the value of the upfront payments, but agrees with the Blooston Rural Carriers that certain RSA minimum opening bids may be overly high.²⁷⁶ US Cellular expresses support for the argument that reducing the minimum opening bids will make the auction less likely to proceed overly quickly.²⁷⁷

210. We find that the minimum opening bid amounts proposed in the *700 MHz Auction Public Notice* are generally appropriate. While the record indicates that the proposed minimum opening bid amounts are higher than many parties would like, the proposed amounts better enable the Commission to meet the statutory objective of recovering for the public a portion of the value of the spectrum resource made available for commercial use.²⁷⁸ The proposed minimum opening bid amounts also will help the Commission meet its statutory deadlines for auctioning this spectrum.²⁷⁹

211. In response to comments, however, we modify the proposed minimum opening bids for certain rural licenses. We recognize concerns commenters raised regarding proposed minimum opening bids and the potential for some licenses, particularly those in rural areas, to remain unsold after the auction. Thus, for RSA licenses only (CMAs 307-734), minimum opening bids will not be greater than \$0.10/MHz-pop. Accordingly, we adopt the revised minimum opening bid amounts and set the minimum opening bids using the revised formulas as follows:²⁸⁰

- For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of \$0.03/MHz-pop; for RSA licenses only, subject to a maximum of \$0.10/MHz-pop
- For licenses covering geographic areas for which a corresponding Auction 66 license was unsold, \$0.01/MHz-pop
- For licenses covering the Gulf of Mexico, \$1,000 per MHz
- For all remaining licenses, \$0.01/MHz-pop

212. Both Verizon Wireless and Frontline suggest that the minimum opening bid for the D Block should be set at its reserve price since it is only one license and will not be assigned if the reserve is not met.²⁸¹ MetroPCS opposes this suggestion, arguing that setting the D Block minimum opening bid at the reserve bid would deny bidders the opportunity to determine the relative value of the D Block, and may even hurt the winning bidder's ability to finance its bid for the D Block.²⁸² We agree that there may

²⁷⁵ RTG Comments at 3.

²⁷⁶ Verizon Wireless Reply Comments at 5-6.

²⁷⁷ US Cellular Reply Comments at 4.

²⁷⁸ See 47 U.S.C. § 309(j)(3)(C).

²⁷⁹ See 47 U.S.C. § 309(j)(15)(v).

²⁸⁰ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, news releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

²⁸¹ Verizon Wireless Comments at 5; Frontline Comments, Attachment at 24.

²⁸² MetroPCS Reply Comments at 7.

be value, to bidders and others, in accepting bids for the D Block short of the reserve. Therefore, we adopt the minimum opening bid for the D Block as proposed in the *700 MHz Auction Public Notice*.

213. The Commission did not receive any comments addressing the proposal that the Bureau retain the discretion to reduce minimum opening bid amounts. We adopt this proposal. The minimum opening bid amounts are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses or packages.

214. The specific minimum opening bid amounts for each license available in Auction 73 calculated pursuant to the procedure describe above are set forth in Attachment A.

3. Bid Amounts

215. In the *700 MHz Auction Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license or package using one or more pre-defined bid amounts.²⁸³ Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license or package.²⁸⁴ Wrege/Hoffman propose “best and final” bid procedures to allow bidders a chance to enter their own bid amounts, if they wish to bid more for a license but less than the minimum acceptable bid increment would require.²⁸⁵ Wrege/Hoffman believe adopting a “best and final bid” procedure would give bidders a better opportunity to bid up to the full amount of their final license valuations.²⁸⁶ MetroPCS and Verizon Wireless oppose creating this “best and final bid” procedure because it may encourage gaming the auction system and would be unfair to bidders that have a provisionally winning bid.²⁸⁷ We recognize that there may be circumstances under which the proposed procedure could enhance the economical efficiency of the auction, but find that the costs in terms of increased auction complexity and opportunity for anti-competitive signaling would outweigh the benefits in Auction 73. We adopt the proposal set out in the *700 MHz Auction Public Notice*.

216. *Minimum Acceptable Bids.* Under our proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license or package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. Minimum acceptable bids are calculated based on current price estimates and an activity-based formula.

217. *Current Price Estimates.* Under the proposed HPB auction procedures, after there is a provisionally winning bid for a license, the FCC will determine a “current price estimate” (“CPE”) for each license in each round as a basis for calculating minimum acceptable bids.²⁸⁸ For non-C Block

²⁸³ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 “Upfront Payments and Bidding Eligibility,” above.

²⁸⁴ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license.

²⁸⁵ Wrege/Hoffman Comments at 8.

²⁸⁶ *Id.*

²⁸⁷ MetroPCS Reply Comments at 16-17; Verizon Wireless Reply Comments at 6, n.23.

²⁸⁸ For the licenses subject to package bidding in HPB, there may not be individual provisionally winning bids for some licenses, if the provisionally winning bid covering the licenses is a package bid. Therefore, CPEs serve as a proxy for individual license provisionally winning bid amounts. The procedure for computing CPEs is described in greater detail in Attachment H.

licenses the CPE will be the provisionally winning bid amount, so that minimum acceptable bids are based on provisionally winning bid amounts, as in an SMR auction without package bidding. For licenses in the C Block subject to HPB, if a bid on an individual license is provisionally winning, the CPE for that license will be the provisionally winning bid amount. If a package bid is provisionally winning, the CPEs for individual licenses in the package will be constructed by scaling up the bids on individual licenses so that the sum of the license CPEs equals the provisionally winning package bid.²⁸⁹ Bids are scaled up by adding “shares” to the highest bid received so far in the auction for each license in the package.²⁹⁰ These shares are proportional to the bidding units associated with each license relative to the total number of bidding units in the package. The proposed mechanism for determining CPEs in an HPB auction format is described in more detail in Attachment H.

218. Commenters disagree on the method for calculating the CPEs for C Block packages. Pekec suggests using current high bids as weights when scaling up bids. US Cellular advocates using provisionally winning bids, not bidding units, to determine CPEs for C Block bids.²⁹¹ Verizon Wireless, however, disagrees with US Cellular’s suggestion, and supports our proposed method of calculating CPEs.²⁹²

219. We do not agree that we should scale up license prices using current bid amounts, since doing so may encourage undesirable strategic bidding. Bidders would have an incentive to bid up the prices of other licenses while holding back on the licenses they are interested in, in order to force other license prices to bear a larger share of the shortfall.

220. We also decline to adopt the suggestions of MetroPCS and US Cellular that we base the minimum acceptable bids for C Block REAG licenses directly on the highest bids for those licenses. Scaling up the minimum acceptable bid amounts for licenses in a package, so that the sum of bids on individual licenses equals the minimum acceptable bid on the package, mitigates the coordination or “threshold” problem that may face bidders trying to compete with a large package bid in a package bidding auction. Absent such a procedure, package bid prices could become disproportionately large relative to the prices for the package components, making it difficult for bidders on the individual licenses to compete with the package bid, especially since bidders on the individual licenses may bid cautiously, hoping that bidders on other licenses will make up the difference required to catch up with the package bid.

221. We also do not believe that the proposed method of calculating CPEs is overly complex, as alleged by US Cellular.²⁹³ In fact, we will use HPB in part because the mechanism for calculating CPEs is significantly simpler than other package bidding pricing mechanisms that adequately address coordination issues.²⁹⁴

222. *Activity-Based Formula.* Under our proposal, once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the

²⁸⁹ Goeree, J. K. and C. A. Holt, “A Simple Combinatorial Auction,” Working Paper, May, 2007.

²⁹⁰ If no bids have been placed on an individual license, the share will be added to the minimum opening bid amount.

²⁹¹ Pekec Comments at 2; US Cellular Comments at 6; US Cellular Reply Comments at 5. MetroPCS adds that it believes the CPE calculation proposal is an unsuitable proxy, and supports US Cellular’s proposal to use provisionally winning bids to determine C Block CPEs. MetroPCS Comments at 11; MetroPCS Reply Comments 15-16.

²⁹² Verizon Wireless Reply Comments at 8.

²⁹³ US Cellular Reply Comments at 6.

²⁹⁴ See, e.g., *Auction 66 Comment Public Notice*, Attachment B.

CPE. The percentage is calculated using the activity-based formula described below. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

223. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the “additional percentage”) is calculated at the end of each round, based on an activity index which is a weighted average of (a) the number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²⁹⁵ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the CPE amount to obtain the minimum acceptable bid for the next round.

224. We proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the CPE (which, for non-C Block licenses will equal the provisionally winning bid), depending upon the bidding activity covering the license.²⁹⁶ Equations and examples are shown in Attachment G.

225. A number of commenters addressed the activity-based formula to calculate minimum acceptable bids. Wrege/Hoffman advocate increasing the activity weight factor from 0.5 to, for example, 0.75, so that the current round’s activity has more weight in determining the next rounds minimum acceptable bid.²⁹⁷ Wrege/Hoffman also advocate modifying the minimum acceptable bid formula by decreasing the floor from the proposed 10 percent to 5 percent, and decreasing the ceiling from the proposed 20 percent to 10 percent.²⁹⁸ Frontline, MetroPCS, US Cellular, and Verizon Wireless express support for the change in floor and ceiling percentages proposed by Wrege/Hoffman.²⁹⁹

226. In the *700 MHz Auction Public Notice*, we noted that the Bureau retains discretion to limit the absolute amount by which a minimum acceptable bid for a license may increase over the previous provisionally winning bid – for example, the Bureau could set a \$10 million cap on increases in minimum acceptable bid amounts over provisionally winning bids – and we sought comment on the circumstances under which we should employ such a limit. Frontline suggested a cap on bid increments of \$150 million per license per round would help avoid problems associated with bids rising more quickly than bidders, especially new entrants, can obtain approval for the additional funds, and would not delay the auction significantly.³⁰⁰

²⁹⁵ For Round 1 calculations, because there is no prior round (*i.e.*, no round 0), the activity index from the prior round is set at 0.

²⁹⁶ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁹⁷ Wrege/Hoffman Comments at 7.

²⁹⁸ *Id.* at 7-8. US Cellular also recommends adjusting the floor and ceiling percentages and weighing recent bids more than previous bids (with weight factor greater than 0.5), but does not propose specific numbers. US Cellular Comments at 5.

²⁹⁹ Frontline Reply Comments, Attachment at 1; MetroPCS Reply Comments at 5-6; US Cellular Reply Comments at 4; Verizon Wireless Reply Comments at 4-5.

³⁰⁰ Frontline Reply Comments at 1.

227. We recognize bidder concerns that very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues, especially since the minimum opening bids in Auction 73 are higher than were our starting bids, for example, in Auction 66. At the same time, since the licenses initially offered in Auction 73 will not be sold unless reserve prices are met, it will be useful for the auction to move at a reasonably fast pace at least until reserve prices are satisfied. We reiterate that we have the discretion to modify minimum acceptable bid amounts – by changing the activity-based formula parameters or by imposing or modifying a cap on the dollar amount of bid increments – as we see fit during the auction. Taking commenter concerns into account, we determine that we will retain initial floor and ceiling parameters at 10 and 20 percent, respectively, as proposed, but we will begin the auction with a \$100 million cap on the amount of the bid increment. That is, minimum acceptable bids for the next round generally will be between 10 and 20 percent higher than provisionally winning bids, but they will not exceed provisionally winning bids by more than \$100 million dollars.

228. *Additional Bid Amounts.* Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) * (1 + 0.1), rounded, or (minimum acceptable bid amount) * 1.1, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.2, rounded; etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.³⁰¹

229. For Auction 73, the Bureau proposed to set the bid increment percentage at 0.1, so that any additional bid amounts above the minimum acceptable bid would each be 10 percent higher. For non-C Block licenses, the Bureau proposed to begin the auction with one acceptable bid amount per license (the minimum acceptable bid amount). For C Block licenses subject to HPB, the Bureau proposed to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts).

230. We received no comments on our proposal to set the bid increment percentage at 0.1. We adopt our proposal to begin the auction with a bid increment percentage of 0.1.

231. Several commenters, however, advocate providing more than one acceptable bid amount per license for the non-C Block licenses. Frontline argues that limiting bid increments would interfere with price discovery.³⁰² MetroPCS favors multiple bid increments to enable bidders to get as close to their final bidding amounts as possible.³⁰³ Wrege/Hoffman also believe multiple bid increments are important to bidders that value licenses at more than the current minimum acceptable amounts but less than the next round's minimum acceptable bids.³⁰⁴ Verizon Wireless supports providing at least three bid

³⁰¹ Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

³⁰² Frontline Comments, Attachment at 24.

³⁰³ MetroPCS Comments at 16-17

³⁰⁴ Wrege/Hoffman Comments at 5-6.

increments for all licenses, not just those in the C Block.³⁰⁵ US Cellular agrees, advocating at least three acceptable bid amounts (i.e., the minimum acceptable bid and two additional bid amounts).³⁰⁶

232. We are not persuaded that additional bid amounts provide bidders with significantly more flexibility to express their valuations. Our experience with past auctions indicates that bidders rarely use multiple increment bids as the commenters suggest – to express their final valuations more precisely – but more frequently use jump bids as a means of signaling other bidders. As we noted in the *700 MHz Auction Public Notice*, we proposed that bidders on licenses in the C Block be able to make multiple increment bids to ensure that bidders on individual licenses can effectively compete with package bids, even when there are not individual bids on one or more of the licenses in the package. Absent that need for multiple increment bids in the non-package bidding blocks, we will not modify our proposal. Therefore, we will begin the auction with one acceptable bid amount for each non-C Block license and C Block packages and three acceptable bid amounts for each C Block license.

233. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the dollar cap on bid increments, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis.

4. Provisionally Winning Bids

234. At the end of each bidding round, a “provisionally winning bid” will be determined based on which combination of bids together provides the greatest aggregate gross amount. Provisionally winning bids at the end of the auction become the winning bids, provided that applicable reserve prices are met. For the 1,087 licenses not subject to package bidding, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received for the license, taking into account the bids placed in the round and the provisionally winning bids from the previous round.³⁰⁷ For licenses in the C Block subject to HPB, the FCC Auction System will determine which combination of individual and package bids yields the highest aggregate gross bid amount, taking into consideration each bidder’s highest bid on each license or package submitted up to that point in the auction.³⁰⁸ These bids become the provisionally winning bids for the round. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.³⁰⁹

235. In order to determine which combination of bids on licenses and/or packages yields the highest aggregate bid amount in a HPB auction, the FCC Auction System compares aggregate bid amounts across the various levels in a recursive process. It first compares, for each package in the second level, the sum of the highest individual license bids from the first level with the highest bids on packages in the second level containing those licenses. Those bids that generate the maximum total bid amounts become provisionally winning. Attachment H provides additional detail on this procedure.

³⁰⁵ Verizon Wireless Reply Comments at 6.

³⁰⁶ US Cellular Reply Comments at 4-5.

³⁰⁷ Bidders may have limited ability to withdraw provisionally winning bids on non-C Block licenses. *See* Section IV.B.5. “Bid Removal, Bid Withdrawal, and Dropped Bids,” below.

³⁰⁸ For C Block licenses and packages, bidders will be able to drop non-provisionally winning bids from consideration, in some circumstances and with certain restrictions on subsequent bidding. *See* Section IV.B.5. “Bid Removal, Bid Withdrawal, and Dropped Bids,” below.

³⁰⁹ Section IV.A.3. “Eligibility and Activity Rules,” above.

236. In the *700 MHz Auction Public Notice*, the Bureau proposed to break ties randomly.³¹⁰ Pekec suggests that because there will be at most a single acceptable bid amount for all but the individual C Block licenses, there will be multiple ties, and that therefore, we should consider alternate means of breaking ties.³¹¹ Frontline opposes Pekec's proposal, arguing that adopting such a procedure for breaking ties would result in bidders feeling pressure to submit their bids hastily, which, Frontline argues, would raise bidding costs, increase the potential for bidding errors, and discourage proper analysis and review before submitting bids.³¹²

237. In previous FCC auctions, even though up to nine acceptable bid amounts were permitted, multiple increment bids accounted for only a small fraction of the total number of bids placed. Thus, we do not expect that the frequency of tied bids will be significantly different than in past auctions, and we do not adopt any changes to our tie-breaking procedures. Hence, we adopt the proposal described above. The FCC Auction System will assign a random number to each license in each bid upon submission. In the event of ties among bids that generate the highest aggregate gross bid amount, the set of bids with the highest sum of random numbers becomes provisionally winning. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

238. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 73. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

239. A bidder's ability to bid on specific licenses or packages of licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

240. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID[®] token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

241. In each round, eligible bidders will be able to place bids on a given license or package in one or more pre-defined bid amounts.³¹³ For each license and package, the FCC Auction System will list the acceptable bid amounts in a drop-down box.³¹⁴ Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

242. Until a bid has been placed on a license or a package that includes the license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license or a package that includes the license, minimum acceptable bids for a license will be determined as described in Section IV.B.3.

³¹⁰ *700 MHz Auction Public Notice* at ¶ 74.

³¹¹ Pekec Comments at 3.

³¹² Frontline Reply Comments, Attachment at 4.

³¹³ Bidders must have sufficient eligibility to place a bid on the particular license or package. See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

³¹⁴ See Section IV.B.3. "Bid Amounts," above.

243. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds (in blocks without package bidding), drop non-provisionally winning bids (C-Block licenses or packages), or permanently reduce eligibility. If a bidder submits multiple bids for the same license or package in the same round — multiple bids on the exact same license or package, not one bid on a package and one bid on a license in that package — the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed, dropped, or withdrawn its bid do not count towards the bidder's current activity.

244. As stated above, for licenses subject to package bidding in HPB, the FCC Auction System considers each bidder's highest bid on each license or package when determining the provisionally winning bids.³¹⁵ Consequently, for licenses in the C Block, an individual license or package bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. This may occur even if the bidder does not have the bidding eligibility to cover the newly-provisionally winning bid.³¹⁶ This contrasts with the SMR procedure used for licenses not subject to package bidding, in which only provisionally winning bids from the previous round and bids placed during the round are considered when determining provisionally winning bids.

245. MetroPCS requests that we clarify that a bidder can win a license or package that becomes provisionally winning, after not having been part of the winning set in the previous rounds; we clarify that point here.³¹⁷ US Cellular opposes allowing a bidder to win licenses with bidding units exceeding its eligibility at the auction's end. Leap agrees.³¹⁸ The commenters argue that winning "reactivated" bids may force bidders to win more licenses than they can afford. We do not accept US Cellular's proposal that we not allow bidders to win licenses with bidding units that exceed its eligibility. We recognize that occasionally bidders may need to change bid strategies as prices rise. Accordingly, we provide limited opportunities for bidders to withdraw and drop bids, which if used carefully, allow bidders to avoid winning licenses they no longer wish to win. Thus, we find that the requested restriction on winning bids that exceed eligibility is unnecessary to protect bidders from winning more than they wish to win.

246. We encourage bidders on licenses and packages in the C Block to bear in mind that their highest bid on each package or license will be considered every time the FCC Auction System determines a new set of provisionally winning bids. This feature allows bidders on individual licenses to compete more effectively with package bids, since their individual license bid can combine with bids on other individual licenses placed in previous rounds, and stabilizes CPEs. Bidders will be able to evaluate the extent to which a bid placed in a previous round is likely to become winning by comparing the bid to the other considered bids for the license or package.

247. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

³¹⁵ The solver considers the highest bid placed by each bidder on a given license or package, regardless of the rounds in which the bids were placed.

³¹⁶ In such cases, the bidder's bidding eligibility will not be restored or increased.

³¹⁷ MetroPCS Reply Comments at 14-15.

³¹⁸ US Cellular Comments at 7; Leap Reply Comments at 3.

5. Bid Removal, Bid Withdrawal, and Dropped Bids

248. In the *700 MHz Auction Public Notice*, the Commission proposed bid removal, bid withdrawal, and dropped bids procedures.³¹⁹ The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses not subject to package bidding (i.e., all licenses except in the C Block) in no more than two rounds during the course of the auction. The Bureau further proposed that bidders be able to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction.

249. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 73.

250. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for non-C Block licenses using the “withdraw bids” function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

251. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.³²⁰ The Commission will serve as a “place holder” provisionally winning bidder on the license until a new bid is submitted on that license.

252. The *700 MHz Auction Public Notice* proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder’s discretion.³²¹ The Bureau received no comments on the number of proposed withdrawal rounds.

253. We have decided, in contrast to the proposal in the *700 MHz Auction Public Notice*, to limit each bidder to withdrawing bids in only one round of the auction. In recent auctions, we have detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While we continue to recognize that bid withdrawals may reduce risk associated with efforts to secure various licenses in combination, analysis of previous auctions indicates that bidders rarely need two withdrawal rounds to avoid aggregation risk. Therefore, we conclude that, for Auction 73, adoption of a limit on the use of withdrawals to one round per bidder will better balance the need for bidding flexibility with the goal of discouraging anti-competitive bidding behavior. We will therefore limit the number of rounds in which bidders may place withdrawals to one round.

254. The Bureau received a number of comments and replies addressing the proposal not to allow withdrawals on provisionally winning bids for licenses in the C Block. The 4G Coalition urges that

³¹⁹ *700 MHz Auction Public Notice* at ¶¶ 76-84.

³²⁰ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

³²¹ *700 MHz Auction Public Notice* at ¶ 78.

bidders on C Block licenses should have the same withdrawal options as other bidders. It asserts that this would reduce the “exposure risk” concerns for C Block bidders.³²² Wrege/Hoffman assert that the Bureau’s proposal to not allow withdrawals on C Block licenses creates major financial risks for bidders.³²³ Leap Wireless contends that the proposed bid withdrawal rules should be modified, because they could discourage bidding in the C Block and restrict bidders from seeking alternative licenses in later rounds of the auction.³²⁴ Frontline maintains that the highest bids on individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids.³²⁵

255. The Bureau proposed not to permit withdrawals of provisionally winning bids in the C Block because, with package bidding, a withdrawn bid can affect the composition of the provisionally winning set of bids, thus affecting the status of the bids of other bidders. In addition, under the mechanism used to determine CPEs in HPB, a withdrawn bid can affect the prices of other licenses. In SMR, in contrast, license-by-license bidding ensures that a withdrawn bid affects only the status of the bidder placing the withdrawal. Since bidders would be able to use withdrawals in the C Block to affect other bidders, permitting withdrawals would facilitate undesirable strategic bidding behavior. Therefore, to avoid the potential for gaming, we maintain our position not to permit withdrawals of provisionally winning bids in the C Block.

256. Wrege/Hoffman suggest that withdrawals not be permitted in the D Block and Frontline supports that position.³²⁶ Because the D Block license is nationwide, bidders do not face the risk of winning an incomplete aggregation of licenses in the block. As discussed above, we will permit that each bidder have only one round in which to withdraw bids, but we do not impose a special prohibition on withdrawals in the D Block, recognizing that D Block bidders may also need to consider their financial commitment to bids in the C Block, where they are unable to withdraw provisionally winning bids.

257. *Dropped Bids.* A bid for a package or a license in the C Block can become provisionally winning many rounds after it was placed, since HPB considers bids made in previous rounds when determining provisionally winning bids.³²⁷ These non-provisionally winning bids are useful to the auction since they enhance the ability of bidders interested in single licenses or smaller packages to combine their bids with the bids of others to compete with a large package bid, and they provide stability to the process for determining current price estimates.³²⁸ It may be the case, however, that a bidder wishes to focus on alternative licenses instead, and no longer wishes to win one of its previous bids. In order to allow bidders to opt out of non-provisionally winning bids that they no longer wish to win, we proposed that under HPB, for licenses subject to package bidding, bidders be allowed a limited number of opportunities to “drop” non-provisionally winning bids from further consideration in the auction.³²⁹

³²² 4G Coalition Comments at 7.

³²³ Wrege/Hoffman Comments at 9-10.

³²⁴ Leap Wireless Reply Comments at 2-3.

³²⁵ Frontline Reply Comments, Attachment at 1-3.

³²⁶ Wrege/Hoffman Comments at 10-11; Frontline Reply Comments, Attachment at 3.

³²⁷ Specifically, the FCC Auction System considers the highest bid placed in any previous round by each bidder on each license and package when determining the provisionally winning set of bids.

³²⁸ See Section IV.B.3. “Bid Amounts” and Attachment H.

³²⁹ After each round of the auction, we will make available a report of the considered bids for each license or package. Thus, bidders will be able to judge the likelihood that a bid from a previous round may become provisionally winning.

258. Eliminating non-provisionally winning bids from consideration may affect the current price estimates of other licenses, thereby affecting other bidders. This ability to affect the bids of other bidders may lead to undesirable strategic use of dropped bids. Therefore, the *700 MHz Auction Public Notice* proposed to permit bidders to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction. To discourage bidders from dropping bids in order to disadvantage their competitors, the *700 MHz Auction Public Notice* also proposed the following restrictions on the circumstances under which bids may be dropped and on the bidder's subsequent bidding activity:

(1) A bidder that is a provisionally winning bidder on a package will not be permitted to drop bids on licenses that are included in the package.³³⁰

(2) A bidder that drops its bids on a license or package will not be permitted to submit further bids on that particular license or package during the auction.

(3) A bidder that drops its bids on a license will not be permitted to submit any bids on packages containing that license for the duration of the auction.³³¹

259. Under these proposals, if a bidder drops a bid on a package, it will be permitted to bid individually on the licenses in the package. When a bid is dropped, all of the bidder's previous bids on that license or package are removed from consideration.

260. No payments are associated with dropped bids. The round in which a bidder may drop non-provisionally winning bids from consideration will be at the bidder's discretion. The Bureau sought comment on these proposals, and on the possibilities of not allowing dropped bids, of allowing dropped bids not subject to all the restrictions proposed above, and of imposing other restrictions than proposed above.

261. The Bureau received a number of comments and reply comments addressing dropped bids. Several entities favor permitting bidders to re-bid on licenses they previously dropped, including the 4G Coalition, Pekec, MetroPCS, Leap Wireless, and Wrege/Hoffman.³³² Pekec also suggested that dropped bids should be subject to withdrawal payments, that the Bureau should consider disallowing dropped bids, and that dropped bids should be announced in advance.³³³ MetroPCS argues that permitting dropped bids in only one round favors package bidders, and may discourage bidders interested in individual licenses from competing in the C Block.³³⁴

262. Frontline maintains that the individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids.³³⁵ It also proposes that bidders that are outbid on individual REAG C Block licenses should not be committed to their bids if the higher bidder

³³⁰ If in Auction 76 there is more than one level of packages of C Block licenses, this restriction is generalized to prohibit dropping bids on sub-packages if a larger package bid is dropped.

³³¹ If in a Auction 76 there is more than one level of packages of C Block licenses, this restriction is generalized, so that a bidder that drops its bids on a license or package will not be permitted to submit any bids on packages containing that license or package for the duration of the auction.

³³² 4G Coalition Comments at 7; Pekec Comments at 2-3; MetroPCS Comments at 17-21; Wrege/Hoffman Comments at 9-11; Leap Wireless Reply Comments at 2-3.

³³³ Pekec Comments at 2-3.

³³⁴ MetroPCS Comments at 17-21.

³³⁵ Frontline Reply Comments, Attachment at 1-3.

withdraws or drops its bid. Instead, Frontline recommends that the individual license should revert to the Commission with a minimum acceptable bid equal to the second highest bid price.³³⁶

263. We also received several requests for clarification of our intended procedures with respect to dropped bids. 4G Coalition suggests that we allow bidders who drop a package bid to be able to bid on the individual licenses in the dropped package.³³⁷ We clarify that this is our intention. US Cellular urges that the Bureau state that the dropped bid procedures allow a bidder to drop all previously submitted non-provisionally winning bids, in order to prevent them from becoming winning bids, another point we have clarified above.³³⁸ Leap Wireless also suggests that a bidder whose dormant bid will be reactivated in the next round of the auction should be notified of that fact and allowed to drop the bid without penalty at that time.³³⁹ We also reiterated above that the FCC Auction System considers the highest bid placed in any previous round by each bidder on each license and package when determining the provisionally winning bids. Therefore, bids do not become “reactivated.” As we also noted briefly, we will release a report after every round that indicates what bids are considered for each package or license, so that bidders will be aware if they have an “old” bid that appears as if it might become provisionally winning.

264. We are not persuaded that we should modify our proposed procedures on dropped bids. Dropped bid procedures in a package bidding environment must be designed to avoid creating disadvantages for other bidders — intentionally or unintentionally — when bids are pulled out of consideration, and our rules are designed with that goal in mind. For example, since withdrawn provisionally winning bids can affect the winning bids of other bidders, we permit drops on non-provisionally winning bids only. Because it is more difficult for bidders on individual licenses to compete against a package bid when only current round bids are considered, we consider bids placed in all rounds, including after a bid is dropped, in order not to give an undue advantage to package bidders.

265. In addition, we find that these dropped bids procedures, and HPB procedures in general, strike a careful balance between permitting bidders adequate bidding flexibility and discouraging insincere and anti-competitive bidding behavior. For example, the prohibition against rebidding on a license that has been dropped will keep bidders from strategically shifting off of a license so that its price will fall relative to the other licenses competing against a package bid, and then rebidding at a lower relative price. We therefore adopt the proposal to permit bidders on licenses and packages in the C Block to drop non-provisionally winning bids during any one round of the auction, subject to the restrictions described above.

266. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.³⁴⁰ If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s).³⁴¹ In Auction 73, if a bid is withdrawn on a license in a block that does not meet the reserve price in the initial auction, withdrawal payments will be based on the provisionally winning bid or bids

³³⁶ *Id.*

³³⁷ 4G Coalition Comments at 6.

³³⁸ US Cellular Comments at 6.

³³⁹ *Id.* at 4.

³⁴⁰ 47 C.F.R. §§ 1.2104(g), 1.2109.

³⁴¹ The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. See 47 C.F.R. § 1.2104(g)(1).

for the license in Auction 76, or in any subsequent auction, consistent with our usual withdrawal payment rule. In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).³⁴²

267. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments.³⁴³ No interim bid withdrawal payments will be assessed until the conclusion of Auction 76, as described in Section VI. below, if necessary. In the *700 MHz Auction Public Notice*, the Bureau proposed to establish the percentage at ten percent (10%) for the 700 MHz Band auction and sought comment on the proposal.³⁴⁴

268. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.³⁴⁵

6. Round Results

269. Limited information about the results of a round will be made public after the conclusion of the round.³⁴⁶ Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. If the license is provisionally winning and part of a larger package additional details regarding the package that contains the specific license will be available. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

7. Auction Announcements

270. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

³⁴² See following paragraph for discussion of interim bid withdrawal payments.

³⁴³ 47 C.F.R. § 1.2104(g)(1); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

³⁴⁴ *700 MHz Auction Public Notice* at ¶ 89.

³⁴⁵ 47 C.F.R. § 1.2104(g).

³⁴⁶ The identities of parties that are qualified to bid in Auction 73 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the other parties against which they may be bidding in the auction.

V. AUCTION 76

271. In the *700 MHz Second Report and Order*, the Commission noted the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum.³⁴⁷ Accordingly, the Commission concluded that if licenses for the A, B, C or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) in Auction 73, the public interest will be served by offering alternative licenses for the relevant blocks in a subsequent auction, as soon as possible after the initial auction. Similarly, if the license for the D Block is not assigned because the reserve price for that license is not met, the license for the D Block may be offered again. For administrative purposes, we designate any such subsequent bidding as Auction 76.

272. As detailed in the *700 MHz Second Report and Order*, any alternative A, B and E Block licenses will be subject to alternative performance requirements. Alternative C Block licenses will be based on different geographic areas and spectrum bandwidth, as detailed below. In addition, the alternative C Block licenses will not be subject to the open platform conditions applicable to the licenses initially offered for the C Block.

273. The Commission concluded that the public interest in prompt licensing of 700 MHz spectrum and the related nature of licenses in Auctions 73 and 76 made it appropriate to adopt auction procedures treating Auctions 73 and 76 as a single auction for purposes of assessing bidders' qualifications and applying the Commission's anti-collusion rule.³⁴⁸ The Commission directed the Bureau to permit only qualified bidders in Auction 73, to participate in Auction 76, and to use the same auction design, including the applicable aggregate reserve price(s), insofar as possible.³⁴⁹ The Commission also required the Bureau to establish procedures that give applicants an opportunity to obtain bidding eligibility specifically for licenses offered in a contingent subsequent auction. Accordingly, the Bureau sought comment on specific procedures for contingent subsequent bidding. Generally, we will apply the Commission's competitive bidding rules with a presumption that Auctions 73 and 76 should be considered to be a single auction, subject to explicit exceptions when necessary. With the exceptions detailed below, we will apply all of the procedures discussed above for Auction 73 to Auction 76.

A. Announcement of Auction 76

274. If, at the close of bidding in Auction 73, the aggregate reserve price for any block has not been met, the Bureau will issue an announcement that bidding in Auction 73 has closed and that Auction 76 will commence on a date not later than three weeks following the announcement.³⁵⁰ The announcement of Auction 76 will establish the deadline by which Auction 73 qualified bidders that selected licenses to be offered in Auction 76 may obtain additional bidding eligibility for Auction 76 by supplementing their upfront payments, if necessary. In the event that the reserve price for the D Block license is met during Auction 73, a Closing Public Notice will be released with respect to the D Block, described in Section VI. "Post-Auction Procedures," below. In the event that Auction 73 results meet the

³⁴⁷ *700 MHz Second Report and Order* at ¶ 306.

³⁴⁸ *Id.* at ¶ 316.

³⁴⁹ *Id.* at ¶ 315.

³⁵⁰ In comments responding to the *700 MHz Auction Public Notice*, Verizon Wireless suggests that the announcement require that bidders refresh upfront payments within 10 days so that the subsequent bidding may begin within weeks of the Auction 73. Verizon Wireless Comments at 4; see MetroPCS Reply Comments at 4 (supporting Verizon Wireless comments and advocating no more than "a week or two" between the end of Auction 73 and the start of any subsequent bidding). The three week window we adopt serves the interest in moving quickly to begin subsequent bidding while allowing time to respond to unanticipated developments. Given this general window, we conclude there is no need to specify the specific timeframe for supplementing upfront payments and leave the Bureau free to determine the appropriate timing if it announces that alternative licenses will be offered.

reserve prices in all blocks, the Bureau will proceed to issue a Closing Public Notice, as described below in Section VI, and Auction 76 will not be held.³⁵¹

B. Licenses To Be Offered

275. Any licenses in the A, B, D and E Blocks available in Auction 76 will cover the same geographic areas and frequencies as such licenses offered in Auction 73. However, as indicated in Figure 2, the alternative C Block will include C1 Block licenses offered in each of the 176 EAs and C2 Block licenses offered in each of the 12 REAGs. A complete list of licenses that may be available in Auction 76 is included as Attachment B of this Public Notice.

Figure 2: Alternative C Block Plan

757		763		775		787		793		805			
C1	C2	A	D	Public Safety		B	C1	C2	A	D	Public Safety		B
CH. 60	CH. 61	CH. 62		CH. 63	CH. 64	CH. 65	CH. 66	CH. 67	CH. 68	CH. 69			
746	752	758	764	770	776	782	788	794	800	806			

<u>Block</u>	<u>Frequencies (MHz)</u>	<u>Bandwidth</u>	<u>Pairing</u>	<u>Area Type</u>	<u>Licenses</u>
C1	746-752, 776-782	12 MHz	2 x 6 MHz	EA	176
C2	752-757, 782-787	10 MHz	2 x 5 MHz	REAG	12

C. Auction Structure

1. Licenses for Blocks A, B, D and/or E

276. If Auction 76 offers licenses in blocks not subject to package bidding in Auction 73 — Blocks A, B, D, and/or E — those block will not be subject to package bidding in Auction 76, and will be offered using the Commission's standard SMR auction design. The procedures applicable to the auction will be the same as those discussed above with respect to licenses for Blocks A, B, D and E in Auction 73, subject to the differences discussed below.³⁵²

2. Alternative Licenses for C Block – Available Packages

277. In the *700 MHz Auction Comment Public Notice*, the Bureau sought comment on whether to accept package bids for alternative licenses for the C Block using the HPB auction design described above for the initial C Block licenses. In response, Frontline proposed that package bids be accepted on three potential packages, one package of all C1 Block licenses, one package of all C2 Block licenses, and one package of all C1 and C2 Block licenses.³⁵³ MetroPCS and US Cellular argue against accepting any package bids for alternative C Block licenses, contending that the complexity that they believe should

³⁵¹ If any licenses remain unsold although the reserves have been met, those licenses will be subject to further proceedings, including potential future auctions, without being subject to the provisions set forth here for a contingent subsequent bidding.

³⁵² Thus, we clarify, as requested by Verizon Wireless and MetroPCS in their response to the *700 MHz Auction Public Notice*, that waivers and withdrawals utilized by a bidder during Auction 73 will not reduce the number of waivers and withdrawal rounds available to a bidder in any contingent subsequent bidding. Verizon Wireless Comments at 6-7; MetroPCS Reply Comments at 17.

³⁵³ Frontline Comments, Attachment A at 18.

preclude package bidding with respect to the original 12 C Block licenses will be further exacerbated should the Commission offer 188 alternative C1 and C2 Block licenses in subsequent bidding.³⁵⁴ In response to Frontline's proposed packages of alternative C Block licenses, US Cellular contends that Frontline's proposal creates an unfair bias in favor of bidders with national strategies.

278. We conclude that we will use non-package bidding SMR procedures for licenses in the C1 Block and HPB package bidding procedures for C2 Block licenses. This approach balances the Commission's interest in providing opportunities for new entrants competing on a nationwide basis with its goal of offering alternative licenses that may be of greater interest to a different mix of bidders, including smaller entities.

279. Accordingly, if there is subsequent bidding on alternative licenses in the C Block, we will employ the HPB auction design discussed above for the C2 Block only, with package bids accepted on the packages described below. The procedures applicable to the HPB auction of C2 Block licenses will be the same as those discussed above with respect to C Block licenses in Auction 73, subject to the differences discussed below.³⁵⁵

280. Licenses in the C1 Block will be auctioned using the SMR auction procedures discussed above for licenses in Blocks A, B, D and E in auctions 73 and 76. Bids for alternative C1 Block licenses will be accepted on individual EA Block licenses only.

281. With respect to C2 Block licenses, bids will be accepted on individual REAG licenses, and on three packages, consisting of a package of REAGs 1-8 (the 50 States), REAGs 10 & 12 (the Atlantic territories), and REAGs 9 & 11 (the Pacific territories). The hierarchical package structure for the C2 licenses is the same as was adopted for the C Block licenses in auction 73, and is displayed in Figure 3 below.

Figure 3: Package Structure of C2 Block Licenses

Level 2: Packages	50 States								Atlantic		Pacific	
Level 1: REAG licenses	1	2	3	4	5	6	7	8	10	12	9	11

D. Bidder Qualification

282. As directed by the Commission, only applicants found qualified to bid in Auction 73 may be eligible to bid in Auction 76. To be eligible to bid in Auction 76, an Auction 73 qualified bidder also must have selected a license offered in Auction 76 on the abbreviated Auction 76 application filed together with its application to participate in Auction 73. As described above, the announcement that Auction 73 bidding has ended without one or more aggregate reserve prices being met also will announce the deadline by which such bidders may submit supplemental upfront payments to purchase bidding eligibility in the subsequent auction.

283. In response to the *700 MHz Auction Public Notice*, Verizon Wireless contends that the Commission's treatment of Auction 73 and any contingent subsequent auction as a single auction for purposes of the Commission's anti-collusion rule requires that applicants select all licenses in which they may be interested, including potential alternative licenses, prior to bidding in Auction 73.³⁵⁶ Verizon

³⁵⁴ MetroPCS Comments at 21, US Cellular Comments at 9.

³⁵⁵ Thus, we clarify, as requested by Verizon Wireless and MetroPCS in their response to the *700 MHz Auction Public Notice*, that waivers and drops utilized by a bidder during Auction 73 will not reduce the number of waivers and drop rounds available to a bidder in any contingent subsequent bidding. Verizon Wireless Comments at 6-7; MetroPCS Reply Comments at 17.

³⁵⁶ Verizon Wireless Comments at 2-4.

Wireless contends that this result is compelled by the Section 1.2105(b)(2) of the Commission's competitive bidding rules, which prohibits changes in license selection after the initial application filing deadline.³⁵⁷ Moreover, Verizon Wireless contends that requiring applicants to select potential alternative licenses prior to Auction 73 will limit the amount of time required between Auction 73 and any contingent subsequent auction.³⁵⁸

284. Given the presumption that Auction 73 and any contingent subsequent bidding on licenses should be treated as a single auction, we have concluded that applicants should select both licenses offered in Auction 73 and licenses that may be offered in Auction 76 by the initial deadline for filing an application to participate in Auction 73.³⁵⁹ We conclude that bidders will be able to make informed selections prior to Auction 73 of licenses, including alternative licenses that may be offered in contingent subsequent bidding. As noted, bidders will have the opportunity to obtain additional bidding eligibility for licenses to be offered subsequently. These procedures will enable contingent subsequent bidding, if necessary, to proceed with minimal delay.

1. Bidder Status

285. To participate in Auction 76, a potential bidder must (1) have become qualified to bid for at least one license offered in Auction 73 by selecting license(s) offered in Auction 73 and making an upfront payment sufficient to establish eligibility to bid for at least one of those license(s), and (2) file an abbreviated Auction 76 application and selected at least one license offered in Auction 76. Qualified bidders in Auction 73 need not bid on the licenses offered in Auction 73 in order to be able to become qualified to participate in Auction 76.³⁶⁰

2. Auction 76 Initial Bidding Eligibility

286. For Auction 76, qualified bidders will have their initial bidding eligibility based on their initial bidding eligibility in Auction 73 and will also have an opportunity to purchase additional bidding eligibility. However, qualified bidders' initial bidding eligibility for Auction 73 will be reduced for Auction 76 if they hold winning bids for any licenses offered in Auction 73 in blocks for which the reserve price was met in Auction 73. For winning bidders of licenses in the A, B, C, or E Blocks, the amount of the reduction will be equal to the number of bidding units associated with the licenses won. For the winning bidder of the D Block license, the amount of the reduction will be equal to the amount of any withdrawal payment owed for withdrawn bid(s) on the D Block license plus the amount of the net winning bid for the D Block license, up to the amount of the winning bidder's initial Auction 73 bidding eligibility.³⁶¹

3. Supplementing Upfront Payments to Obtain Additional Eligibility

287. All bidders qualified to participate in Auction 76 will have an opportunity to purchase additional bidding eligibility. Bidders will be able to purchase additional bidding eligibility for licenses

³⁵⁷ *Id.* at 3.

³⁵⁸ *Id.* at 3-4.

³⁵⁹ Contrary to Verizon Wireless, however, we do not believe that Section 1.2105(b)(2)'s restriction on changing license selections requires the selection of potential alternative licenses. For example, it would not constitute an impermissible "change" in license selection if the Commission made alternative licenses available for selection only after the initial filing deadline for Auction 73.

³⁶⁰ This statement provides clarification requested in response to the *700 MHz Auction Public Notice*. See Frontline Comments, Attachment A at 17; Verizon Wireless Comments at 6.

³⁶¹ Thus, if the D Block winning bidder's initial eligibility is insufficient to cover any withdrawal payment and winning bid obligations relating to the D Block license, its eligibility will be reduced to zero.

to be offered in Auction 76 by supplementing their upfront payments pursuant to the procedures for making upfront payments by wire transfer set forth in this Public Notice, subject to a schedule to be announced following the close of bidding in Auction 73.

4. Continuing Applicability of the Anti-Collusion Rule

288. In the *700 MHz Second Report and Order*, the Commission directed the Bureau to adopt any procedures that may enhance the effectiveness of an auction of licenses in Auction 73 or any contingent subsequent auction. In part, the Commission found that the Commission's anti-collusion rule should treat Auction 73 and any such subsequent auction as a single auction, given the related nature of the auctions. Accordingly, the applicable "down payment deadline" marking the end of the anti-collusion period for Auction 73 and any subsequent auction shall be the down payment deadline established following the close of the subsequent auction.³⁶²

E. Bidding Procedures

1. Aggregate Reserve Prices

289. As required by the Commission, the licenses in subsequent bidding will be subject to the same aggregate reserve price(s) applicable in the initial auction. MetroPCS argues in its comments that the licenses in the second auction should not be subject to any reserve prices because using a reserve price in the contingent subsequent auction runs the risk that the licenses will not be awarded prior to the June 30, 2008, statutory deadline for filing auction proceeds.³⁶³ As MetroPCS acknowledges in its comments, the Commission decision in the *700 MHz Second Report and Order* is binding, absent reconsideration of that Order by the Commission as a whole.³⁶⁴ Consequently, MetroPCS's proposal is beyond the scope of the present non-rulemaking auctions procedures process.

290. In the *700 MHz Second Report and Order*, the Commission noted that the Bureau has delegated authority to determine how to allocate the C Block reserve price upon auction of alternative licenses. Accordingly, in the *700 MHz Auction Comment Public Notice*, the Bureau proposed to apply the C Block aggregate reserve price of \$4.637854 billion to all of the alternative C Block licenses. That is, the sum of the gross bid amounts on the C1 and C2 Block licenses must equal or exceed \$4.637854 billion in order to meet the reserve price. No commenters addressed this proposal.

291. We adopt the Bureau's proposal, with one additional feature. In the event that the sum of the gross bid amounts on the C1 and C2 Block licenses does not meet the reserve price covering both blocks, we then will apportion the aggregate reserve price between the two blocks based on their respective bandwidth and apply those aggregate reserve prices to the respective blocks separately. More specifically, if the aggregate reserve price of \$4.637854 billion covering both Blocks C1 and C2 is not met, the Commission nevertheless will assign licenses for the respective block based on the auction results if the gross bid amounts on the C1 Block licenses exceed \$2.529739 billion or the gross bid

³⁶² See 47 C.F.R. § 1.2105(c)(1). While proposing that applicants be permitted to "opt-out" of any contingent subsequent auction for purposes of the anti-collusion rule, MetroPCS acknowledges that permitting bidders to do so would revise the Commission's decision in the *700 MHz Second Report and Order* and is beyond the scope of the present non-rulemaking auction procedures process. MetroPCS Comments at 24. See Leap Reply Comments at 4-5 (same); see also US Cellular Reply Comments at 8-9 (supporting MetroPCS proposal).

³⁶³ MetroPCS Comments at 22-23.

³⁶⁴ *Id.* at 22. Frontline overlooks this fact in asserting that the bidders in the initial auction will act on the belief that there will be "possibly a lower reserve price (or no reserve price at all)" in a contingent subsequent auction. Frontline Comments at 3. Frontline's assertion is mistaken – the Commission already has decided that the reserve price in the subsequent auction will equal the reserve price in the initial auction for the same block of spectrum.

amounts on the C2 Block licenses exceed \$2.108115 billion.³⁶⁵ Applying these separate aggregate reserve prices will increase the likelihood that licenses will be assigned for the respective blocks in the contingent subsequent auction, while continuing to apply the aggregate reserve price from the initial auction to each block in proportion to the megahertz in each block.

2. Minimum Opening Bids

292. For Auction 76, the Bureau will calculate minimum opening bid amounts on a license-by-license basis using the same approach as in Auction 73, drawing on the Auction 66 prices that were bid on licenses for the exact same geographic areas.³⁶⁶ For any licenses that may be offered in Auction 76, including alternative C1 and C2 Block licenses, minimum opening bids are set forth in Attachment B of this Public Notice.

F. Additional Procedures

293. In the *700 MHz Auction Comment Public Notice*, pursuant to Commission direction, the Bureau sought comment on the possibility of denying bidding eligibility in a contingent subsequent auction based on bidder behavior in Auction 73, if that behavior appeared designed to thwart the assignment of licenses. Specifically, the Bureau proposed that bidders defaulting on winning bids in Auction 73 should be denied eligibility in any subsequent auction.³⁶⁷ We decline to restrict the circumstances under which we might deny bidding eligibility in a contingent subsequent auction to an otherwise qualified bidder.³⁶⁸ The Commission retains the authority to sanction bidders that are found to have violated the antitrust laws or the Commission's rules in connection with competitive bidding by requiring forfeiture of any upfront payments, down payment or full bid amounts, and by prohibiting the bidders participation in future auctions.³⁶⁹ The Commission intends to make full use of this authority, including banning participation in a contingent subsequent auction, with respect to bidders that seek to thwart the assignment of licenses in Auction 73.

³⁶⁵ The separate aggregate reserve prices for Blocks C1 and C2 were calculated by multiplying the C Block aggregate reserve price by the proportion of bandwidth covered by the Blocks C1 and C2 (12/22 and 10/22, respectively), and rounding the results to the nearest thousand dollars.

³⁶⁶ See Section IV.B.2.b. "Minimum Opening Bids," above.

³⁶⁷ In its comments, Verizon Wireless notes that other than with respect to a potential winning bid for the D Block license, there will be no opportunity for post-auction defaults, given that the Commission will not identify the winning bidders or required post-auction payments prior to Auction 76. Verizon Wireless Comments at 8.

³⁶⁸ Verizon Wireless and MetroPCS request that we "clarify" that the Commission will not prohibit otherwise eligible bidders from participating in Auction 76 for any "other" reason, besides a default on an Auction 73 bid, such as withdrawing a bid or dropping a bid pursuant to the procedures adopted for Auction 73. Verizon Wireless Comments at 6; see MetroPCS Reply Comments at 17. The Commission's authority to sanction a bidder by prohibiting participation in future auctions concerns both the bidder's compliance with the Commission's rules and its effect on the competitive character of the auction. Thus, while the Commission will not prohibit participation by a bidder simply because it makes use of a permissible bidding procedure, such as a bid withdrawal or drop, the bidder's compliance with the Commission's rules is not a safe harbor from sanctions in the event that the bidder's actions thwart the competitive character of the auction, notwithstanding that the action is in compliance with the Commission's rules.

³⁶⁹ 47 C.F.R. § 1.2109(d).

VI. POST-AUCTION PROCEDURES

A. Considerations Relating to Certain Post-Auction Payment Rules

1. Apportioning Package Bids

294. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that comprise the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known.³⁷⁰ Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses.³⁷¹ Accordingly, the Commission recently adopted a rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.³⁷²

295. The Bureau proposed to apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the number of bidding units for each license. Alternatively, the Bureau proposed to use the final round CPEs for each license to apportion package bids.³⁷³ The Bureau sought comment on these proposals.³⁷⁴

296. The 4G Coalition suggests that we use a measure more closely related to relative license values, such as minimum opening bid amounts, to apportion package bid amounts among the licenses in the package.³⁷⁵ We accept 4G's recommendation that relative license values be used to apportion package bids, but rather than use a pre-auction estimate of value such as minimum opening bids, we will use the final CPEs of the licenses in the package, as in our alternative proposal. Final CPEs will reflect relative prices as determined in Auction 73. Therefore, when regulatory calculations require individual license bid amounts, we will divide the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses.

2. Interim Withdrawal Payment Percentage

297. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction.³⁷⁶ However, if a license for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same

³⁷⁰ 47 C.F.R. § 1.2110(f). Knowing the size of a small business bidding credit on an individual license may be necessary in order to calculate a small business bidding credit unjust enrichment obligation on a license won as part of a package.

³⁷¹ 47 C.F.R. § 1.2104(g).

³⁷² See 47 C.F.R. § 1.2103(b), as amended by the *CSEA/Part 1 Report and Order*. *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 906 ¶ 39.

³⁷³ Current price estimates are discussed in Section IV.B.3., above.

³⁷⁴ 700 MHz Auction Public Notice at ¶¶ 85-86.

³⁷⁵ 4G Coalition Comments at 6.

³⁷⁶ 47 C.F.R. § 1.2104(g)(1). The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. No withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. *Id.*